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August 11, 1993

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FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

BY HAND

Mr. William Caton
 Acting Secretary
 Federal Communications Commission
 1919 M Street, N.W., Room 222
 Washington, D.C. 20554

Re: PR Docket No. 93-35, RM 7986 --
Channel Exclusivity for Qualified
Private Paging Systems

Dear Mr. Caton:

PageMart, Inc. ("PageMart"), by its attorneys, hereby files supplemental comments in the above-referenced proceeding. To the extent that leave is required to file these comments, such leave is hereby requested.

PageMart is filing these comments in order to address new matters raised by the recent passage of the Omnibus Budget Reconciliation Act of 1993, which includes provisions relating to "regulatory treatment" of certain mobile services, including private paging systems. The public interest would plainly be served by the Commission's consideration of these matters in its deliberations regarding the proposals made in this docket.

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In comments and reply comments, PageMart strongly supported (with some suggested clarifications) the Commission's proposal for earned exclusivity in the 900 MHz bands. Opposition to the Commission's proposal came almost exclusively from common carrier paging companies, which alleged that the proposal would result in disparate regulatory treatment of common carrier and private carrier paging entities.^{1/}

The gist of the common carriers' complaint was that, because common carriers are subject to state regulation while private carriers are not, the exclusivity currently accorded to common carriers provides a "balancing" of the relative regulatory burdens.^{2/} According to this argument, granting channel exclusivity to private carriers would upset this delicate regulatory balance, such that private carriers with exclusivity would enjoy an advantage over their more heavily regulated common carrier competitors. These common carriers urged the Commission to delay any decision in the pending proceeding until a complete regulatory overhaul could be made of the disparate common carrier/private carrier regulatory regimes.^{3/}

These arguments are directly addressed, and effectively made moot, by the passage of the budget legislation, signed into law by President Clinton on August 10, 1993. Section 6002(b) of this legislation contains a new subsection (c) in lieu of the current one in Section 332 of the Communications Act of 1934. The new subsection states, quite simply, that an entity "engaged in the provision of a service that is a commercial mobile service shall . . . be treated as a common carrier." 47 U.S.C. § 332(c)(1)(A). The "definitions" subsection makes clear that the term "commercial mobile service" is intended to encompass a private carrier paging service, such as that provided by PageMart. See id. § 332(d)(1). The

^{1/} See, e.g., BellSouth Comments at 3-6; McCaw Comments at 8-10; Mtel Comments at 3, 15-17; Radiofone Comments at 2-6.

^{2/} See, e.g., Radiofone Comments at 3-6; McCaw Comments at 2.

^{3/} See, e.g., McCaw Comments at 3; BellSouth Comments at 8; Mtel Comments at 16.

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Conference Report accompanying this legislation expresses Congress' intention to have "all commercial mobile services . . . treated as common carriers."

The passage of this legislation (commonly referred to as "regulatory parity" legislation) decisively resolves the issue of whether, because of some discrepancy in regulatory treatment, common carriers should receive an advantage with respect to channel exclusivity that is not enjoyed by private carrier paging entities. It is the clear intention of this legislation that both kinds of carriers be subject to the same regulatory treatment at the state level, and that any perceived advantage of private carriers in this regard be eliminated. Plainly, given this legislation, there is no remaining force to the arguments of common carriers in this proceeding.

In light of the intended regulatory parity between common carriers and private carriers, the Commission's proposal to grant earned exclusivity to paging operators in the 900 MHz band is now more necessary than ever. As PageMart has shown, the proposal would encourage efficiency, innovation, and the expansion of paging services. PageMart urges the Commission to proceed expeditiously with the adoption of a final order granting channel exclusivity to private carrier paging systems.

Respectfully submitted,

PAGEMART, INC.

By:  /s/ Phillip L. Spector

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cc: Parties on Attached Service List

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Letter of PageMart, Inc., was mailed this 11th day of August, 1993, by first class United States mail, postage prepaid, to the following:

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